

be outweighed by lawyers anyway; there will be seven other people on that panel who will be lawyers. Thank you.

MS. STREET: Can you restate that motion?

MR. ROTHSCCHILD: Okay. The motion, as such, is that at the end of 3.11 it will say, "except that two justices on the supreme court shall be laypersons." In other words, the intent of the motion is that section (b) of 3.11 -- the part that requires all judges and justices to be lawyers is not applied to two of the justices on the supreme court. Is that clear?

PRESIDENT CASSELL: Delegate Bruning? Then this Moore is next, and then that Moore.

MR. T. MOORE: Mr. President, I rise --

PRESIDENT CASSILL: No, no, no. Bruning has the floor. This Moore is next, then you're next, then Cooper is next.

MR. BRUNING: It's quite clear to me that this is probably in the wrong place; it's also probably a bad idea. Secondly, I will have fulfilled my function as being one of the two speakers against this motion. I hope we'll find a second to speak against this motion, a second to speak in favor of this motion, and then get on with the business of this convention. Thank you.

PRESIDENT CASSELL: One moment; I'm confused. Were you for the motion or against it?

MR. BRUNING: I was against it.

MR. BLOUNT: Against it, by all means.

PRESIDENT CASSELL: All right. Delegate Brian Moore, delegate Talmadge Moore, delegate Cooper.

MR. B. MOORE: I'd like to speak in favor of the motion on the floor regarding the requirement that two of the nine supreme court justices be laymen. If there is a full bench of attorneys, there tends to be a narrow perspective on cases before them. I know, historically, it has always been that way, but it's always a good idea to lend a different perspective on the problems that are confronting us, especially in our very complicated, technical society.

The idea of bringing on board engineers, doctors maybe, or even a policeman or an industrial worker, would lend some common sense to making judgments on decisions. You have to remember something. In the Supreme Court, the decisions are made as a group, so that an individual justice is not isolated. And if he's not isolated, he has the legal expertise afforded him in the fact that seven of nine are attorneys, so that the two non-attorneys can lend other credits.

For example, the situation -- Mr. President, could I

have order, please?

PRESIDENT CASSELL: Yes, I will try to restore order for you. May we have a cessation of the buzzing now?

MR. B. MOORE: I know it's a new idea, and it's a very sacred body of men and women, but we have to think along these new lines. Historically, the court has changed, and this would be an added dimension to the court.

An example would be the accident that occurred in Kansas City with the collapse of the roof. The fact that --

PRESIDENT CASSELL: Delegate Moore?

MR. B. MOORE: Yes?

PRESIDENT CASSELL: Let's see if we can't get some real order. Fellow delegates, I have the feeling that Moore is speaking to a house which is divided in its attention.

MR. BLOUNT: Because we don't want to hear it.

PRESIDENT CASSELL: It's getting kind of late. He has a right to say it, so please let us quiet down and hear it so that we can finish this particular motion.

MR. B. MOORE: Also, a point of personal privilege, Mr. President.

PRESIDENT CASSELL: Personal privilege? You already have the floor.

MR. B. MOORE: All right, fine. I just wanted to

respond to what was just said. People may not want to hear an idea, but the person has the right to express it.

PRESIDENT CASSELL: I've already said that. You just have to speak on your motion.

MR. B. MOORE: All right, fine.

Basically, that's it -- added technical expertise, common sense, a new perspective, and additional help for the supreme court. That will bring, I believe, a better sense of justice to the system. I would urge you to support this motion on the floor.

PRESIDENT CASSELL: Talmadge Moore?

MR. T. MOORE: Mr. President, Talmadge Moore, Ward 5. I rise to oppose the motion. I think that we want to have a person at the highest level of being a justice; I think that person should have the experience and expertise in that particular field. I feel that we don't need to compromise that position. They are making judgments on people, so I strongly oppose this motion of putting laymen on the supreme court.

PRESIDENT CASSELL: Delegate Cooper, delegate Harris.

MR. COOPER: I have to point out that Mr. Rothschild did raise a correct point. The Constitution of the United States does place no requirement on Supreme Court justices to be lawyers. I think the amendment is very much in order and I



think it's a good amendment and we should vote it up.

My own preference would have been to strike the entire section (b) under 3.11. However, I will settle for this amendment.

PRESIDENT CASSELL: Delegate Harris?

MS. HARRIS: As a member of the committee, Mr. President, some of these ideas were brought before the committee. They were clearly researched and they were discussed fully by all of the members who were there, and I think that there was not any support for the idea of having a layman as a justice on the supreme court.

I'm concerned with the fact that we spend a lot of time as if this were a convention for elocutionism, and we get up here and we bring up these proposals and we really slow up the process of the convention.

MS. CORN: Out of order.

MS. HARRIS: That is out of order.

MS. CORN: That's out of order, Mr. President.

PRESIDENT CASSELL: Delegate Simmons?

MS. SIMMONS: I would like to say that I'm going to speak in favor of the amendment, but I will be voting against it, and it's because I think that we have to be aware of the work and the energy and the fact that we've got to have a

creditable, passable document. But I think we ought not to absolutely reject out of hand that which is not traditional.

There is absolutely nothing that says that the corner on morality and equity and justice and ethics resides in legal training. As a matter of fact, the jury system is based upon the judgment of one's peers, which would automatically suggest to you that there is respectfulness for the commonality and the mores and the folkways of persons being judged by those who have lived under similar circumstances.

So, though I offer that as a very reasonable, logical and legitimate position, I will be voting against it because I also feel that we will have a legislature that can engage in the expansion of this kind of creativity, and at this time our major issue is to produce a document which will least cause us to not succeed in what I think is the overriding task of the document.

(Applause.)

PRESIDENT CASSELL: Delegate Robinson?

MR. ROBINSON: Samuel Robinson, Ward 5. I stand to speak in opposition to the amendment. Tradition plays a great role in our society, and tradition and custom have not produced -- as the maker of the motion stated, Earl Warren was not a non-legal person.

I also believe that the importance of this document mandates that we not take any steps to the contrary and propose that our highest court contain persons with non-legal training. I am in agreement with the previous speaker that legal training is not an absolute necessity in terms of the jury system. But at the supreme court level, I defy anyone to tell me that any of the 50 states of this Union now has as its chief judge a non-legal person.

PRESIDENT CASSELL: All right. Everybody who has his hand up now has spoken on this. Is it essential to speak again, delegate Bruning and delegate Mason?

MR. BRUNING: I move the previous question.

(The motion was duly seconded.)

PRESIDENT CASSELL: Those in favor of cutting off debate, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

MR. ROTHSCILD: Point of order. We were going to hear from counsel as to the legality.

PRESIDENT CASSELL: Perhaps we should hear from

counsel before we vote, as we have done previously. Counsel?

MR. THOMAS: Mr. Rothschild is right. There is no constitutional provision prohibiting an individual from being a judge because he is not a lawyer.

PRESIDENT CASSELL: Those in favor of the amendment, which takes away the requirement for legal training of five years, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(A chorus of "nays.")

MR. BLOUNT: The amendment was for two persons to be laypersons on the supreme court.

PRESIDENT CASSELL: Would you state your amendment again, please?

MR. ROTHSCHILD: My amendment is to 3.11, and it has to be determined by Style and Drafting as to exactly where it should go, but I put it at the end after (e). I say, "except that two justices on the supreme court shall be laypersons." Thank you.

PRESIDENT CASSELL: My personal opinion is that that wording is not consistent with the rest of the section there. Could we vote on whether the idea should be incorporated in that section or not, not necessarily in those specific words?

MS. CORN: Mr. President, that's a matter that can be easily handled in the S&D Committee.

PRESIDENT CASSELL: Thank you. Is the amendment clear now, and that is that there should be two additional judges who would not necessarily be --

MR. ROTHSCHILD: Not additional.

MS. CORN: Two out of the nine shall be lay people.

MR. ROTHSCHILD: Two out of the nine shall be laypersons.

PRESIDENT CASSELL: All right. It is clear?

MS. SHELTON: Yes.

PRESIDENT CASSELL: Now, it's clear to the Chair; two out of the nine shall be laypersons.

Those in favor of that motion, signify by raising your hands.

MR. COOPER: Four.

PRESIDENT CASSELL: Those opposed?

MR. COOPER: Twenty-one.

PRESIDENT CASSELL: Abstain?

(No response.)

PRESIDENT CASSELL: There are four for, and 21 against.

MR. BLOUNT: Could we have a vote on 3.11, please?

PRESIDENT CASSELL: Those in favor of 3.11, as amended, signify by saying aye.

(A chorus of "ayes.")

PRESIDENT CASSELL: Those opposed?

(No response.)

PRESIDENT CASSELL: Abstain?

(No response.)

MR. BLOUNT: Mr. Chairman, I move the adoption of section 3.12, "Tenure."

(The motion was duly seconded.)

PRESIDENT CASSELL: It has been moved and seconded that 3.12 be adopted. Discussion?

MS. CORN: Discussion.

PRESIDENT CASSELL: Delegate Schrag, delegate Love, delegate Corn.

MR. SCHRAG: Mr. Chairman, I move an amendment to section 3.12 to make it consistent with the Jordan amendment to 3.10. The amendment is as follows: change the first line to read "Judges of the superior and supreme courts" -- that is put "supreme" on the first line along with "superior" -- "shall be appointed for life, subject to rejection" --

MS. CORN: Wait.

MR. SCHRAG: "Judges of the superior and supreme

— courts shall be appointed," and then delete most of the next two lines and substitute, "for life, subject to rejection under section 3.10, and (2)," and then go back to the third line, "mandatory retirement at age 70 or removal, suspension or involuntary retirement." Then, leave the period and delete the next line, which says, "The justices shall serve until reappointment or a successor is appointed." Delete that line.

PRESIDENT CASSELL: May we have a copy of that?

MR. SCHRAG: I will write it out for you.

PRESIDENT CASSELL: Thank you. Discussion? Delegate Paramore, delegate Graham.

MS. PARAMORE: Delegate Paramore, Ward 8. Delegate Schrag has said that this would be consistent with the Jordan amendment, but it would not be consistent. In fact, the Jordan amendment has two years and he's talking about for life, and if you're going to come up before the public for review and have an election, then the person is in there for life and he doesn't need to come up with that.

PRESIDENT CASSELL: I'm sorry. Was that a question?

MS. PARAMORE: Well, I guess I need a point of clarification. It's not consistent with the Jordan amendment.

MR. SCHRAG: The Jordan amendment has them come up every six years, delegate Paramore.

MS. PARAMORE: Right. You said for life.

MR. SCHRAG: Yes, for life, subject to reelection or removal every six years.

MS. CORN: Every six years.

MS. PARAMORE: But he might not make it for the next six years. In other words, if he comes up for review by the public after six years, he might not make it. But if you're saying "for life," then he's got to stay in there for life without that.

PRESIDENT CASSELL: There was a qualification.

MS. CORN: I have a way to clarify it, Mr. President.

PRESIDENT CASSELL: Delegate Graham?

MS. GRAHAM: Mr. President and members of this august convention, I am appalled at us setting an age where a person has to retire at age 70.

MS. JONES: Point of order.

MS. GRAHAM: Am I ahead of myself?

MS. JONES: Yes.

PRESIDENT CASSELL: State your point of order.

MS. GRAHAM: I was thinking you were talking about mandatory retirement at this time. Are we?

PRESIDENT CASSELL: No. There's an amendment to the



motion that doesn't speak to mandatory retirement. It does not affect that portion of the section.

MS. GRAHAM: I'll hold it until a little later.

PRESIDENT CASSELL: All right.

MS. EICHHORN: Point of order, Mr. President.

PRESIDENT CASSELL: Delegate Eichhorn?

MS. EICHHORN: I believe that delegate Graham wants to further amend the language that is before us by deleting or changing the mandatory requirement.

MR. BLOUNT: Mr. Chairman, for ease in working with this, I think it's better that we dispose of the technical language that Mr. Schrag proposed first.

MS. EICHHORN: Then you should tell her when she'll be in order.

MS. GRAHAM: Mr. President, will you tell me, then, when I need to do so?

PRESIDENT CASSELL: I will just simply say to you that what you are addressing now is out of order at this particular point. That is not a part of the amendment.

Delegate Eichhorn, you had your hand raised. Is it down now?

MS. EICHHORN: Well, Mr. President, it seems to me that if she wants to amend the amendment --

PRESIDENT CASSELL: No, no, no. You had your hand raised before that. I think she's clear now that she was out of order, and I think she can speak for herself. Did you have something else, delegate Eichhorn?

MS. EICHHORN: No.

PRESIDENT CASSELL: Delegate Bruning, delegate Moore.

MR. BRUNING: Yes. I would like to speak in favor of the essentially technical revisions that delegate Schrag has come up with. He's changing the language to conform to a motion already approved by this body, in which I voted in the majority. The question of age can come up at a future date, so I support this language.

PRESIDENT CASSELL: Delegate Moore?

MR. B. MOORE: I rise to support the amendment on the floor by Mr. Schrag; it's sort of a left-handed support. If you'll recall, in my earlier proposal I recommended that a judicial commission select judges and that they be there for life.

Well, I wasn't able to get to my first proposal, but the second one is now coming before us, which I'm pleased to see. This way, I think it will provide more security to the judges on the court and, in a sense, make it less political. I'm concerned about the politicalization of judges and their

running for office or being subject to the voters periodically.

So, on this first reading, I'm in favor of life for the judges, and if this is approved, by the time of the second or third reading you might reconsider the proposal about a judicial commission selecting the judges; then we've got it made.

PRESIDENT CASSELL: Delegate Schrag, delegate Harris, delegate Graham, delegate Jones, delegate Jordan, delegate Shelton, we have several side conversations and only half of us are really listening to the discussion. Now, if we need a recess in order to go on, perhaps somebody should ask for it. The last delegate speaking had practically nobody's attention; we are still having that problem.

Is it necessary to recess, delegates?

MS. SHELTON: Yes, sir.

MS. JONES: Yes.

MS. SHELTON: Mr. President, this is quite a technical area and we have to read the language of the Jordan amendment in light of the language of this amendment to see what we're dealing with, and I think that's the nature of the buzzing; it's not to be disrespectful.

PRESIDENT CASSELL: All right. I'm going to declare a 15-minute recess, and hopefully when we come back, we can

recess.

MS. SHELTON: Five is sufficient.

PRESIDENT CASSELL: Fifteen minutes.

(Whereupon, a brief recess was taken.)

MS. FREEMAN: We now have 22 or 23 delegates, depending upon whether Mr. Cooper is correct or incorrect in the count.

MR. COOPER: Point of personal privilege.

MS. FREEMAN: I think we were on rule 3.12 and the Schrag amendment to that. Could you reintroduce your amendment, please?

MR. SCHRAG: I apologize to the delegates for not having this in writing. The xerox machine is once again out of commission. I typed it up, but the machine is not available to reproduce it, so I will read it again.

In section 3.12, I am inserting some words. In the first line: "Justices of the supreme court and judges of the superior court shall be appointed for life, subject to rejection under section 3.10," then deleted the words that are printed on your text starting with "shall be appointed" and running through the word "to," which is the second to the last word in the third line of the section.

So, it would read, "subject to rejection under

section 310," and then add the word "and." Then it would read "and to mandatory retirement," and so forth. Delegate Graham will make a substitute motion to get rid of the mandatory retirement. Then delete the last sentence, "The justices shall serve until reappointment or a successor is appointed."

MS. FREEMAN: Is there a second to that?

(The motion was duly seconded.)

MS. FREEMAN: Delegate Simmons?

MS. SIMMONS: Hearing no one wanting to debate, I would like to move the question.

(The motion was duly seconded.)

MS. CORN: Point of order.

MS. FREEMAN: Delegate Corn?

MS. CORN: Point of clarity. This is how I would have it read: "Justices of the" --

MS. FREEMAN: You're out of order.

MS. CORN: No; this is perfecting language.

MS. SIMMONS: That's for Style and Drafting.

MS. CORN: "Justices of the supreme court and" --

MS. FREEMAN: Gloria, you are out of order. The question has been called. If there are two people who wish to debate on either side, please let it be known. Otherwise, I

will ask all those who would like to shut off debate to please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(There was one "nay.")

MS. FREEMAN: All right. Those in favor of the Schrag amendment, as read, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(No response.)

MS. FREEMAN: Abstentions?

MS. CORN: Abstain.

MS. FREEMAN: Two abstentions.

Delegate Graham?

MS. GRAHAM: Madam Chair, I'd like to move to amend 3.12, line 13, to strike every word after "subject to," including the first six words beginning at the end of line 13, continuing on line 14. Should I get a second to that and then speak to it, or go ahead and speak to it now?

MS. FREEMAN: Speak to it.

MS. GRAHAM: Persons who have obtained age 70 and who are competent to carry out the functions of a judge --

(The motion was duly seconded.)

MS. FREEMAN: Thank you.

MS. GRAHAM: -- should not be forced to retire. Should this remain, citizens reaching age 70 would be discriminated against due to the blessings of age or longevity. Mandatory retirement should not be in competition with the longevity of an individual.

Should an individual be blessed to reach 70 and, if competent, I think that person should continue to function if he or she is able. I ask the members of this delegation to support the amendment that I have made.

MS. FREEMAN: There was a second to that motion. Debate?

MS. FEELEY: Point of information. Could you repeat the amendment, please?

MS. GRAHAM: I move to amend 3.12, line 13, to strike every word after "subject to," including the first six words -- that is, "mandatory" at the end of line 13, and the five words beginning line 14, and the words are "mandatory retirement at age 70 or."

MS. FREEMAN: Delegate Barnes had his hand up.

MS. SIMMONS: I would like to move the previous question.

(The motion was duly seconded.)

MS. FREEMAN: Delegate Barnes, you had your hand up. Did you want to speak to this motion?

MR. BARNES: No.

MS. FREEMAN: Delegate Long?

MR. LONG: Essentially, it's a question because I'm unfamiliar with the total function of the judicial disabilities and tenure commission and whether the question of removal or disability due to age would be treated by that commission or not.

MS. FREEMAN: Would somebody care to answer that question? Delegate Simmons, you had your hand up. Will you speak to that?

MS. SIMMONS: Yes. I simply want to say that my own experience has been that if age has, for that person, become disabling -- not because they have attained the age, but because in the degenerative process for some people, which occurs at age 32 --

(Laughter.)

MS. SIMMONS: The real reason for the mandatory removal would not be having attained the age, but rather the aging condition.

MR. LONG: That was my question, whether that commission has the power to do such a thing.



MS. FREEMAN: Delegate Mason?

MR. MASON: I would point out that in the federal judiciary, there is no requirement that a person retire at any particular age. Mr. Justice Black stayed on way beyond 70.

MS. SIMMONS: And Douglas, too.

MR. MASON: Several others have stayed on well beyond 70. I happen to be 71 myself, and whatever might be my other qualifications to be a judge, at least my age shouldn't make me ineligible.

MS. SIMMONS: Right.

MS. FREEMAN: Delegate Bruning, are you speaking against the motion, because there have been two people who have spoken for it and the question was called.

MR. BRUNING: No.

MS. FREEMAN: Delegate Eichhorn, are you speaking against the motion?

MS. EICHHORN: Well, for the moment.

MS. FREEMAN: All right.

MS. EICHHORN: My only concern is that we cannot know whether we're going to have a commission, and I'm concerned about that because it is not necessarily part of the Alaska-Missouri plan. It is a part of the plan the committee drafted. If there is an interest on the part of delegates for

that type of a body, then I would strongly support the amendment.

But as it stands, without that assurance that there is another way other than impeachment by the legislature, it leaves it rather open. I was planning to move to table until we reach the point where we discuss the tenure commission and consider it. That's not in order now, so I'm not sure how to proceed.

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: I'd like to respond to delegate Eichhorn's concern. There is no inconsistency between this motion and the draft as I expect it will stand.

MS. EICHHORN: I understand that.

MR. SCHRAG: It makes sense for us now to delete one of the duties of the tenure commission; that is, the duty of reviewing judges at the end of their terms, since we've now given them life terms, subject to this retention election. But it still makes sense to have a tenure commission to rule on disability or something like that.

MS. EICHHORN: Mr. Schrag, you and I may think that makes sense, but it has not been supported by a majority of the delegates.

MS. FREEMAN: Delegate Eichhorn, you're out of

order.

Are there any other people who wish to speak against the motion?

MR. BLOUNT: I would speak against it for the committee. We heard that the judges would not be inactive because they would be in a class called "senior judges." Also, there was some sentiment that when you reach the age of 70, it is time for retirement. So, I would speak against the motion.

MS. FREEMAN: The question has been called. We've had two speakers on both sides. Those who would like to close debate, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(No response.)

MS. FREEMAN: Those in favor of the Graham amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(There was one "nay.")

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: All right, the amendment is carried.

Are there anymore amendments? Is there anything more

on provision 3.12?

(No response.)

MS. FREEMAN: Delegate Bruning?

MR. BRUNING: I move the previous question.

(The motion was duly seconded.)

MS. FREEMAN: All those in favor?

(A chorus of "ayes.")

MS. FREEMAN: All those opposed?

(No response.)

MS. FREEMAN: Okay. All those in favor of adopting provision 3.12, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: 3.12 is adopted. Delegate Blount?

MR. BLOUNT: I move the adoption of section 3.13,  
"Judicial Nomination Commission."

(The motion was duly seconded.)

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: Madam President, I have a perfecting amendment to this section that has been shown to the chair

of the committee and has his approval, as well as that of Vice President Harris, and I'm passing out copies to the delegates.

This amendment deals with some language on line 7 that currently reads, "Such members shall serve for terms of six staggered years." The problem with the language as it reads is that there are nine members serving for terms of six years, and it doesn't tell which members serve which terms. Obviously, some method has to be developed for staggering these terms so that the members first appointed serve for terms of different lengths.

The amendment that I've offered starts at the word "terms" on line 7 and reads, "terms of six years, except that the terms of seven of the members first selected shall be of shorter duration, as provided by law, so that members' terms will expire on a staggered basis." This amendment leaves it to the legislature to work that out.

(The motion was duly seconded.)

MS. FREEMAN: Discussion on this amendment? Delegates  
Corn?

MS. CORN: I'd like to amend it by saying -- since, as delegate Schrag put it, this would leave it up to the legislature to determine it, why not add that so that it's good and clear?

MR. ROTHSCHILD: It says, "as provided by law."

MS. FEELEY: "As provided by law."

MS. FREEMAN: Delegate Simmons?

MS. SIMMONS: I would move the previous question.

(The motion was duly seconded.)

MS. FREEMAN: Is there anybody who wishes to speak either for or against this?

(No response.)

MS. FREEMAN: All those in favor of closing off debate -- delegate Barnes?

MR. BARNES: Is this the Corn amendment?

MS. FREEMAN: Excuse me?

MR. BARNES: Is this the Corn amendment?

MS. FREEMAN: No; this is Schrag's.

All those in favor of closing off debate, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: All right. We're voting on the Schrag amendment. Those in favor, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: Delegate Love?

MR. LOVE: Madam Chair, I would like to omit the following words. This is with the idea that now we have judges up for rejection or approval by the people; we probably do not need a publicly-elected judicial nominating commission. So, I would move to say, "The commission shall consist of nine members," and then strike "of which five shall be elected on a non-partisan basis by the voters and four shall be appointed."

(The motion was duly seconded.)

MS. FREEMAN: Delegate Love, I think we have not yet adopted 3.13.

MR. LOVE: This is an amendment to 3.13.

MS. FREEMAN: I'm sorry.

MR. LOVE: The second sentence: "The commission shall consist of nine members."

MS. FREEMAN: Is there a second to that?

(The motion was duly seconded.)

MS. FREEMAN: Discussion?

MR. ROTHSCILD: Point of order. Do we have a

— quorum?

MR. COOPER: No.

MS. FREEMAN: We don't have a quorum?

MR. COOPER: No.

MS. FREEMAN: How many are we missing?

MR. COOPER: We have 22.

MS. FREEMAN: Is there any delegate around? We need one.

MR. COATES: I'll get him.

MS. FREEMAN: We can discuss this amendment.

(Pause.)

MS. FREEMAN: Is it all right with the delegates that we discuss this motion without a quorum?

VOICES: Yes.

MS. FREEMAN: Apparently, the maker of the motion has to repeat and move the amendment again.

MR. LOVE: I move that the second sentence, which begins --

MS. FREEMAN: Excuse me, delegate Love. Apparently, we're still out of order because of the quorum call.

MR. SCHRAG: Point of order.

MS. FREEMAN: We have a quorum now. Is this what your point of order pertains to?



MR. SCHRAG: Did we have a quorum when my amendment passed?

MR. COOPER: No.

MR. SCHRAG: Then let's do my amendment again to make sure that that's okay.

MR. COOPER: It is, unless a quorum is called for. He didn't call for a quorum on that one.

MR. SCHRAG: Okay.

MS. FREEMAN: Delegate Love, could you move your amendment, please? We do now have a quorum.

MR. LOVE: Madam Chair, this would be the second sentence of number 3.13. It begins, "The commission shall consist of nine members." At that point, I would place a period. I would delete the rest of the sentence: "of which five shall be elected on a non-partisan basis by the voters and four shall be appointed."

All of those people will be appointed. Since they will all be appointed at this point, it will be covered in 3.14, which we'll get to next.

MS. FREEMAN: Is there a second to that?

(The motion was duly seconded.)

MS. FREEMAN: Discussion? Delegate Simmons?

MS. SIMMONS: Call for the question.

(The motion was duly seconded.)

MS. CORN: Point of information.

MS. FREEMAN: Delegate Corn?

MS. CORN: Does that leave the next sentence in place, and the whole next paragraph?

MS. FREEMAN: Delegate Corn, we adopted the Schrag amendment on line 7. Delegate Love is speaking only to the previous line.

MS. CORN: So, in other words, the next paragraph all stays intact?

MS. FREEMAN: It remains in place unless somebody chooses to amend it.

The question was called and I noticed that there was nobody to speak on either side. So, all those in favor of closing off debate, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: All those in favor of the Love amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: Abstentions?

(One hand was raised.)

MS. FREEMAN: The motion carries.

Delegate Schrag?

MR. SCHRAG: Madam Chair, I move to change the word "such" in the second line of the next paragraph to the word "their." The governor and the board of governors will only have some of these appointments, not all, under either system. So, it's only their amendments that they have to make this designation with respect to.

MS. FREEMAN: Is there a second to that?

(The motion was duly seconded.)

MS. FREEMAN: Delegate Simmons?

MS. SIMMONS: This is really an inquiry. I wonder if delegate Schrag, in order to be consistent, might also change the "one year" on line 12 to "five years." We can handle both of those.

MR. SCHRAG: I think that's a different and substantive concern, and I'd rather deal with those separately delegate Simmons.

MS. SIMMONS: All right.

MS. CORN: Would delegate Schrag repeat where his change is?

MS. FREEMAN: Delegate Corn, you're out of order.

There is a second to the motion by delegate Schrag.  
Is there any discussion on this, or can we accept this by  
acclamation?

MS. CORN: Where is it?

MS. FREEMAN: On line 9, the word "such" to be  
replaced by the word "their."

MS. SIMMONS: I call the question.

(The motion was duly seconded.)

MS. FREEMAN: All those in favor of closing off  
debate?

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: All those in favor of substituting the  
word "their" for the word "such," please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: The motion carries.

Delegate Simmons?

MS. SIMMONS: Yes. I rise to, on line 12, simply replace "one year immediately prior to appointment" to "five years immediately prior to appointment."

MS. FREEMAN: Is there a second to that?

(The motion was duly seconded.)

MS. SIMMONS: First of all, I think it's consistent with some of the other requirements. Certainly, if the judicial nominating commission is going to be people who are in tune with the pulsation of the community for whom they are going to suggest people to serve, I think it requires more knowledge than one year's presence in the community would suggest. It is for that reason that I would rather err on having them here more than enough time than too little.

MS. FREEMAN: Is there any delegate who wishes to speak either in favor of or in opposition to this?

(No response.)

MS. FREEMAN: Would somebody like to call the question?

MR. COOPER: We don't need the question.

MS. FREEMAN: Okay. All those in favor of the Simmons amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: Abstentions?

(One hand was raised.)

MS. FREEMAN: One abstention.

Delegate Bruning?

MR. BRUNING: I withdraw.

MS. FREEMAN: Delegate Corn?

MS. CORN: One other thing. I'd like lines 8 and 9 to read, "The governor and board of governors of the Unified State Bar, in consultation with the Women's Bar Association and the Washington Bar Association, shall designate," et cetera. If you like, I'll speak to the amendment.

MS. FREEMAN: I've got to get a second first.

MS. CORN: If I speak to it, I believe I'll get a second.

MS. FREEMAN: Is there a second?

(The motion was duly seconded.)

MS. FREEMAN: Delegate Corn?

MS. CORN: The reason I say that is if you look at the Unified State Bar and its composition, et cetera, all of the major corporations of the area comprise it -- the major law firms. In reality, if you look at who the constituency of this city is, at least 50 percent are women.

Also, the Unified State Bar is predominately -- the powers that be there -- white, whereas the Washington Bar Association is predominately black. Therefore, I strongly recommend a change so that it reads, "The governor and the board governors of the Unified State Bar, in consultation with the Women's Bar Association and the Washington Bar Association, shall designate," et cetera.

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: With some reluctance, because I think the spirit is good, I rise to oppose it. The Unified State Bar is an official governmental organization with legal status in the state, and every person licensed to practice law must be a member of this bar. It is the official organ of the legal community and has status as such.

These other bar associations are voluntary organizations, which people can become members of or not become members of. These organizations may even go out of business while our constitution is still in force. They are totally voluntary membership organizations in which people pay dues.

I don't think that we should give constitutional status to a private, voluntary organization, as much as I agree with the spirit of this amendment and I hope that the

Unified Bar governors do consult with these people. But I don't think it's proper to give a particular trade organization constitutional status.

MS. FREEMAN: Delegate Bruning?

MR. BRUNING: I move the previous question.

(The motion was duly seconded.)

MS. CORN: I'd like to withdraw it, if the seconder will, in light of delegate Schrag's comments.

MS. FREEMAN: Who was the seconder?

MS. CORN: Cooper.

MR. COOPER: Certainly.

MS. FREEMAN: Delegate Love?

MR. LOVE: Madam Chair, the current superior court has a total of 41 judges; there are six women and there are 13 blacks. Although I have great faith in our new state, I would like to add a phrase at the end of this section which says, "The judicial commission shall nominate judges representative of the population of the state."

MS. FREEMAN: Is there a second to that motion?

(The motion was duly seconded.)

MR. LOVE: The language is, "The judicial commission shall nominate judges representative of the population of the state."



MS. FREEMAN: Delegate Simmons?

MS. SIMMONS: I rise to speak in behalf of the motion because I did appreciate the sense of what delegate Corn was attempting to achieve. But I do think that it's a very dangerous precedent to write into a state constitution private trade associations, and if that precedent should be set tonight --

MS. CORN: It was already withdrawn.

MS. FREEMAN: Delegate Corn, you're out of order.

MS. SIMMONS: I would be inclined to think that that would encumber our document later as we move forward in a whole variety of the sections that are yet to come. So, knowing that this amendment was coming forward, I did vote against the previous amendment and will be supporting the current amendment before the house. It achieves the same thing.

MS. FREEMAN: Delegate Eichhorn?

MS. EICHHORN: I would like to know from our legal counsel if a strict interpretation of that would mean that 50 percent of the nominees must be women and that a certain proportion must be aged. What are the implications of that?

MR. THOMAS: It would appear to me to be very ambiguous and challengeable.

MS. EICHHORN: Could it be challenged on the basis of age?

MR. THOMAS: Yes. It would seem to me that it would provoke all sorts of litigation in terms of people bringing actions. Someone could say that a certain amount of the population was over 50 or a certain amount of the people of the state are aged.

MS. EICHHORN: I support the thrust of the amendment, but I really think that we would get in trouble and that we're better off trying to get a commission which is comprised of people who will do that without writing it into the constitution. So, I'm opposed to the amendment, but not the purpose of the amendment.

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: I regret that I have to oppose this one, also, but I do so for the reasons stated by the general counsel. This is a law we're writing; it's a constitution, but it's a law. This is a point that we should keep in mind all the way through; it's going to be especially important when we come to the bill of rights section.

Every sentence that we write and every word that we write in the constitution is going to become the subject not of one, but of many lawsuits. People are going to rely on this

constitution as the creator of rights. And people dissatisfied because they did not get nominations for judgeships are going to take this amendment as an open invitation to file a lawsuit against the new state and claim that they were unfairly discriminated against in violation of the constitution.

MS. FREEMAN: Delegate Cooper?

MR. COOPER: Yes. I'd like to rise to speak in opposition to the amendment. I think first of all that Mr. Love's prefacing remarks are most noble. I think that his remarks reflected the spirit of what America should be. However, I think that the language set forth really doesn't add any teeth to the constitution because it gives no guarantee to any segment of the population.

So, although it is noble and I do go along with the idea, I have to speak against the amendment.

MS. FREEMAN: Delegate Corn, you had your hand up.

MS. CORN: Basically, delegate Cooper said it for me; merely that while I certainly concur with --

MS. FREEMAN: There are a number of speakers on each side.

MR. COOPER: She was recognized.

MS. FREEMAN: Yes, she was recognized. We are passing over this in the name of expediency. Thank you.

Would the maker of the motion like to have an opportunity to speak to it?

MR. LOVE: In light of this, I would like to withdraw the motion. I wonder if there is any way this body could go on record as encouraging this in some way without there being constitutional language. I don't know if that's appropriate or not.

MS. FREEMAN: Delegate Simmons?

MS. SIMMONS: As the seconder of that motion, I'm fully aware that the motion belongs to the body and that we can't just arbitrarily withdraw it. But I would like to express as the seconder that I would be in favor of withdrawing it with the maker of the motion.

What can be achieved in terms of your inquiry is the legislative history accompanying the document, and that's why we do have that analysis that goes with the document. So, I think this can be achieved.

MS. FREEMAN: Perhaps we can simply say that this body tonight agrees with the spirit of that motion. Can we do that by acclamation? That will then become part of our legislative history.

MS. SIMMONS: Fine.

MS. FREEMAN: Thank you. Delegate Blount?

MR. BLOUNT: Do you want the main motion?

MS. FREEMAN: Delegate Eichhorn?

MS. EICHHORN: I call the question on the main motion.

(The motion was duly seconded.)

MS. FREEMAN: Delegate Graham?

MS. GRAHAM: We lost our quorum.

MR. ROTHSCHILD: We've lost our quorum.

MS. FREEMAN: All right. Are there any delegates roaming around?

(Pause.)

MS. FREEMAN: If there's a possibility of getting a quorum, let's please try to do so. We have another hour in which we can work tonight.

Delegate Mason?

MR. MASON: I just want to point out that Hilda is coming back; she's not gone for good.

MS. FREEMAN: Well, that's good. We need two delegates. Are there two delegates wandering around.

MS. SIMMONS: Was there a quorum called?

MS. FREEMAN: Yes, a quorum was called for.

MS. SIMMONS: Who called for it?

MS. FREEMAN: Delegate Graham called for a quorum.

MS. SIMMONS: May I share an observation? You know, it's almost as if we can't stand progress.

(Applause.)

MS. FREEMAN: How many delegates do we have in the room, Mr. Secretary?

MR. COOPER: We have 23.

MS. FREEMAN: Okay, we have 23. We were about to vote on the closure of debate. Delegate Eichhorn?

MS. EICHHORN: I call the question on the entire section.

(The motion was duly seconded.)

MS. FREEMAN: Those in favor of adopting section 3.13, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: Abstentions?

(One hand was raised.)

MS. FREEMAN: One abstention; 3.13 is adopted.

MR. BLOUNT: I move the adoption of section 3.14, "Commission Leadership."

MS. FREEMAN: Second?

(The motion was duly seconded.)

MS. FREEMAN: I have a point of order. Delegate Corn, would you please smoke outside the convention hall?

MS. CORN: I'm not the only one who is smoking.

MS. FREEMAN: Would all smokers please smoke outside the convention hall? Stand in the doorway; I do want a quorum.

Delegate Schrag?

MR. SCHRAG: Madam President, I move an amendment to this section. This is the second to the last perfecting amendment I have, to add at the very bottom of page 7 the following language: "The current facts of law in this section and in section 3.16 refer to the experience specified in section 3.11(b)."

The effect of this language would be to conform the experience required of the lawyers on the commission to the experience required for judges; that people who have been members of a faculty of a law school in the state for five years or who have worked for the state government as lawyers or have worked as lawyers for the federal government for five years would be entitled to be members of the judicial nominating commission.

We already say that they can be judges. I think there's little justification, if we say they can be judges,

for saying they can't be members of the judicial nominating commission.

Furthermore, if we restrict lawyer membership on the judicial nominating commission to lawyers who are in the private practice of law and exclude faculties of law schools and government lawyers who are making the nominating commission far more conservative than it otherwise would be, we're just making lawyers who seek careers in the profit sector members of the commission and excluding those lawyers who are likely to be more liberal, who have chosen careers in the non-profit sector of the economy. Therefore, I'd make this motion.

(The motion was duly seconded.)

MS. FREEMAN: There was a second to the motion.

Delegate Simmons?

MS. SIMMONS: I would like to move the previous question.

(The motion was duly seconded.)

MS. FREEMAN: Those in favor of closing off debate, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: Those in favor of the Schrag amendment



please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Opposed?

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: Delegate Love?

MR. LOVE: Madam Chair, we have in a sense removed (d) and (e) from this section now, since we no longer talk about election. Therefore, I'm going to propose a slightly different mix which might be open to some small debate.

Given the fact that we, I think, support the merit selection of judges, I'm going to propose a commission which has a majority of lawyers -- five lawyers and four lay people. So, I want everybody to understand that. The people who will be nominating our judges will have a majority of lawyers on that, and we expect them to be selected on the basis of merit.

I would distribute them as follows: "Six members shall be appointed by the governor" -- so, instead of "two," just put in the word "six" -- "of which two shall have been engaged in the practice of law in the state for at least five successive years preceding appointment," and then add the words "and four shall not be lawyers."

MS. FREEMAN: Which line are you on, delegate Love?

MR. LOVE: Starting at the very beginning of (a) on the top of page 7 --

MR. COOPER: Line one?

MR. LOVE: Line one. Substitute the word "six" for "two," so it reads, "Six members shall be appointed by the governor," and then the next line, "of which two," rather than one, "shall have been engaged in the practice of law in the state for at least successive years preceding appointment," and then add the words "and four shall not be lawyers."

Under my proposal, then, four non-lawyers would be appointed by the governor. I would like to ask people to think at this point about whether we want the advice and consent of the legislature for these appointments.

But, continuing, in (b) substitute for the word "one" "two." "Two members shall be appointed by the board of governors of the Unified State Bar and shall be engaged in the practice of law in the state for at least five years preceding appointment," and (c) will remain the same and (d) and (e) will be deleted.

(The motion was duly seconded.)

MS. FREEMAN: Delegate Eichhorn?

MS. EICHHORN: Where is your fifth lawyer?

MR. LOVE: Two lawyers will be appointed by the governor, two lawyers will be appointed by the bar, and one lawyer will be appointed by the legislature. Non-lawyers will be appointed by the governor.

MS. FREEMAN: Can you bring a copy of your language up to the Secretary?

Delegate Corn?

MS. CORN: First, I'd like to ask a question of the maker of the motion and then I'd like to propose a substitute motion. I'd like to ask the maker of the motion why he's giving so much power to the governor, because if six people are going to be appointed by the governor, whether they are lawyers or non-lawyers, that is two-thirds of the body. If you're going to allow the governor to have two-thirds of the body, it almost doesn't matter where the other three come from. Why are you giving so much power to the governor?

MS. FREEMAN: I'd like delegate Love to speak to his motion at the close of the debate. Delegate Simmons?

MS. CORN: But I said I wanted to make a substitute motion after I had a --

MS. SIMMONS: I would like to have the privilege of sharing the executive branch position, of which delegate Corn is a member, but she was a peripatetic member. What is

understood is that the executive branch, as the document indicates, has recommended a strong executive, and this is indeed in concert with that executive branch position.

MS. CORN: I know that.

MS. FREEMAN: Could delegate Love please answer delegate Corn's question? She may want to make a substitute motion.

MR. LOVE: I have two answers. One is in terms of staggering; you'd have to have a governor who was in for two terms, at least, before he would get to make all these appointments. The second is, as I say, I would entertain from the floor the idea that these appointments would be made with the advice and consent of the legislature, in which case it could reduce some of the power of the governor. That's an open question, I think.

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: I'd like to ask a question of delegate Simmons. Is it not true, delegate Simmons, that if we leave this language as is, these appointments will be subject to advice and consent of the legislature because all appointments to boards and commissions will be subject to the advice and consent of the legislature?

MS. SIMMONS: That's absolutely correct.

MR. SCHRAG: Thank you.

MS. FREEMAN: Delegate Moore?

MR. T. MOORE: I wanted to ask the maker a question. Delegate Love, in (e) are you saying that the voters won't have the power to elect anybody? Is this what you're saying?

MR. LOVE: Given the fact that the voters now have the ability to reject the judges at the polls later on, what we are talking about in this section is merit selection. The people who are doing the selecting will be not elected, but appointed by the governor, and will be a majority of lawyers. We assume that in that case, at least the appointment of judges initially will be done entirely on merit, so that we will maintain the concept of the merit selection of judges in the District.

MS. FREEMAN: Delegate Corn?

MS. CORN: I would speak against the amendment. What you have here, outlined by delegate Love, is political plums being paid off by the governor in this set-up. The governor will have the opportunity to pay off all his political favors in the form of judgeships. I speak against it, regardless of the Jordan amendment that has passed.

MR. ROTHSCHILD: It's not judgeships.

MS. CORN: I'm sorry; not judgeships, but the

commission members. This is still a political plum and a political pay-off.

MS. FREEMAN: Delegate Mason?

MR. MASON: Only to point out one change that is made by the Love amendment which might not be apparent at first, the previous language with respect to the governor's appointees provided that one shall be a lawyer. It did not forbid the other one from being a lawyer; they might or might not.

The Love language provides that two shall be lawyers and the other four shall not. In other words, he didn't leave any number that might or might not be lawyers, as the previous one did. So, it actually requires four non-lawyers, as distinguished from permitting a certain number of the seats to be either lawyers or non-lawyers, as the governor might choose. I didn't want that to go by without people noticing it.

My inclination would be to leave those seats free so that the governor could appoint either kind. I would also point out that if the intent is to have confirmation --

MS. FREEMAN: Excuse me, delegate Mason. Could we please have quiet in the convention hall?

MR. MASON: If the intent is to have confirmation --

the legislature for the governor's appointments, I think it should be so stated. The reason for this is that at the present time there are a large number of offices filled by the Mayor that are subject to confirmation.

However, where some of the seats on a body are filled by the Council, by the legislative body, and others by the executive, the practice generally is not to require confirmation because the legislative body gets in it on the ones that it appoints all by itself, and therefore has no say about those appointed by the executive.

MS. SIMMONS: Right.

MR. MASON: I think I would move to drop that part of the Love language that would require the four to be non-lawyers. I would let them be either lawyers or non-lawyers, as the governor might choose.

I would so move to amend the Love amendment to drop the requirement that those four be non-lawyers.

MR. SCHRAG: Change "shall not" to "need not," Charles?

MS. FREEMAN: Delegate Mason, could you please clarify your motion?

MR. SCHRAG: Change "shall not" to "need not?"

MR. MASON: Yes, that would cover it -- "need not."

MS. FREEMAN: Is there a second to that?

(The motion was duly seconded.)

MS. FREEMAN: Delegate Long?

MR. LONG: I wish to make a different kind of motion, so when this is decided, then I'll be ready to speak.

MS. FREEMAN: Delegate Bruning, you had your hand up.

MR. BRUNING: No; I withdraw it.

MS. FREEMAN: Delegate Simmons?

MS. SIMMONS: Yes. I guess I'm rising to speak against the Mason amendment because as it stands in (a), "two shall have been engaged in the practice of law" out of the six that the governor is appointing. (B) says, "Two shall be appointed by the board of governors of the Unified Bar," so that sounds like four lawyers to me. And then (c) says one shall be appointed by the legislature, and it must be a lawyer or a retired judge.

So. we're guaranteed five lawyers, and that is indeed the majority of the nine, and I think to make possible an overwhelming majority of lawyers is, you know, gilding the lilly and I don't see the need for that. I think that a majority is just fine, and we've provided for five lawyers to sit on this body. I just don't happen to be one of those who



worships at the shrine of the legalistic mind. So, I think when they have a majority, they're in good shape, since we're dealing with judges.

But I would hate to see us move into worshipping at that shrine and saying that they could be all nine; the Mason language could make all nine of them lawyers. I think that would be reprehensible.

MS. FREEMAN: Delegate Coates?

MR. COATES: Call for the question.

(The motion was duly seconded.)

MS. CORN: I have asked to make a substitute.

MS. FREEMAN: We are now on the Mason amendment; the question has been called on the Mason amendment.

MR. SCHRAG: Point of order. I would like to speak for; there haven't been two speakers speaking for.

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: The motion was to change "shall not" to "need not."

MS. CORN: Which line is that?

MR. SCHRAG: Wherever it appears in the section, Gloria.

MR. COOPER: Line 4.

MR. SCHRAG: I rise to speak not in favor of lawyers

but in favor of flexibility and the right of democratically-elected officials to have the kind of flexibility that they need to be able to govern the state in the way the people want them to govern.

Let the political process work; let's not tie everybody's hands with constitutional restrictions. If the governor is going to appoint all lawyers to this body and if the people don't want that, let them use that as a good reason to vote against the governor. The legislature is going to confirm these people; let the people vote against the legislators who confirm them. Let the people have some democratic rights to rule in this state, and not pen their rights about with tons of constitutional restrictions.

MS. FREEMAN: The question has been called and we've had two speakers in favor and two speakers in opposition. The question has been called on the Mason amendment. Those in favor of closing off debate, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(No response.)

MS. FREEMAN: We are now voting on the Mason amendment.

MR. ROTHSCILD: Could I have a clarification? The

intent of the amendment, then, is to permit the governor to choose whether or not they will be lawyers?

MS. FREEMAN: That's correct.

MR. ROTHSCHILD: Just the governor's?

MS. FREEMAN: For the governor's appointees.

Those in favor of delegate Mason's amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(A chorus of "nays.")

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: The amendment fails. We are now back to the Love amendment. Delegate Bruning?

MR. BRUNING: I would like to amend the Love motion to read, "The appointments of the governor shall be subject to legislative confirmation," "advice and consent," or whatever.

(The motion was duly seconded.)

MS. FREEMAN: Delegate Maguire?

MR. BRUNING: Can I speak to that?

MS. FREEMAN: Yes.

MR. BRUNING: He will be putting in two-thirds of t

seats on there and indeed there is the possibility that some of these are going to be essentially political pay-offs or choices that may not be the most reasoned and objective choices. So, in that regard I'd like to have the legislature at least have a shot to be something of a deterrent in terms of whom he chooses, particularly when he gets to public people.

MR. COOPER: Mr. Bruning, could you state the line number on which your amendment appears?

MR. BRUNING: It would be a new sentence to the end of (a).

MS. FREEMAN: Delegate Maguire?

MS. MAGUIRE: If the Executive Branch Committee's draft is accepted, which would provide for advice and consent of the legislature, would this line then be taken out by Styl and Drafting?

MS. CORN: I can't answer that until I see it.

MS. MAGUIRE: I didn't ask you.

MS. FREEMAN: I would like delegate Corn to answer that.

MS. CORN: The answer is, until I see it in front of me and clearly can compare them in clean, typed form, I cannot tell you that.

(Simultaneous discussion.)

MS. FREEMAN: Could I have one person speaking at a time? I'd like you to be recognized first before you begin to speak.

Delegate Simmons?

MS. SIMMONS: I would simply like to add my ignorance to the situation. The Executive Branch Committee has indicated that all appointments of all boards and commissions and all principal department heads will be with the advice and consent of the legislature.

Now, if that is indeed approved, and I would be surprised if it is not, then to write that statement here is just redundant which, of course, can be taken care of at the time the Style and Drafting Committee puts all that has been approved together.

MS. FREEMAN: Would it be agreeable to the maker of the motion and the person who seconded to withdraw this motion and reserve debate until we debate this in the Executive Branch Committee?

MR. BRUNING: With all due respect, I would rather have redundancy right now and have it taken out rather than have something missing and try to figure where we left it out at some other point.

MS. SIMMONS: Madam President?

MS. FREEMAN: Delegate Corn was next.

MS. CORN: I have a substitute motion to make to delegate Love's motion, and that would be --

MS. MACUIRE: There's a substitute on the floor, Gloria.

MS. CORN: You can make a substitute motion.

MS. FREEMAN: Right now, on the floor we have the Bruning amendment to the Love motion.

MS. CORN: And I want a substitute motion.

MS. FREEMAN: Could you wait until we've taken care of the Bruning amendment? Then I will call on you for that.

MS. CORN: All right, thank you.

MR. LOVE: Move the question.

MS. FREEMAN: Is there a second to that?

(The motion was duly seconded.)

MR. B. MOORE: Point of order.

MS. FREEMAN: Delegate Moore?

MR. B. MOORE: If the Bruning amendment is passed, would that negate Gloria's efforts?

MS. FREEMAN: No. I will call on her for her substitute motion.

The question has been called on the Bruning

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amendment.

MS. CORN: Could you repeat the Bruning amendment?

MS. FREEMAN: Delegate Bruning, could you repeat the amendment, please? Delegate Cooper, do you have that written down?

MR. COOPER: Yes. The Bruning amendment would add after the last line that they would be subject to the approval of the legislature.

MS. FREEMAN: Does everybody have that?

MS. FEELEY: No.

MS. FREEMAN: Could you repeat it one more time? I beg the delegates to pay attention. We are voting now on the Bruning amendment; delegate Cooper will repeat it.

MR. COOPER: The Bruning amendment would add at the end of section (a) that those appointments would be subject to the approval of the legislature.

MS. FREEMAN: Delegate Feeley?

MS. FEELEY: These appointments shall be subject to the advice and consent of the legislature?

MR. COOPER: Right.

MS. FREEMAN: Debate has been closed and we are now voting on the Bruning amendment. All those in favor of the Bruning amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: All those opposed?

(There was one "nay.")

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: The Bruning amendment is adopted.

Delegate Corn, would you like to make your substitute motion?

MS. CORN: Yes. I would make a substitute motion which basically sticks to the text of the committee, the differences being as follows. On number (b), it would read, "Two members shall be appointed by the board of governors of the Unified Bar," et cetera. (C) will read, "Two shall be appointed by the legislature and shall be lawyers," and then (d) and (e) would be combined and say, "Three non-lawyers shall be elected by the voters in a non-partisan election."

MS. FREEMAN: Delegate Corn, to help the delegates, could you please point out the difference between your substitute motion and the original judiciary article as moved by the committee?

MS. CORN: Yes. The original article has--(a), two members appointed by the governor; that is retained. (B) has one member appointed by the bar. I give it two members t



be appointed by the bar who are both lawyers.

MS. JONES: That's what Love has.

MS. CORN: No. Love has six appointed by the governor. I give two to the governor, two to the bar, two to the legislature, and three to be elected by the electorate at-at-large, non-partisan elections, and the three are to be non-lawyers.

MR. LONG: Point of order.

MS. FREEMAN: Delegate Long?

MR. LONG: We have eliminated the election of these commission members in a previous section, 3.13.

MS. FREEMAN: Excuse me, delegate Long. We're missing a quorum again.

MS. CORN: Point of order, Madam Chair.

MS. FREEMAN: Delegate Corn, we cannot continue until we have a quorum. I had a quorum call.

(Pause.)

MS. FREEMAN: We don't have a quorum at the moment. The elevator operator says she should have stopped working a half hour ago. So, we can make a choice and we can walk down, as we did last Saturday.

MR. COOPER: That's no problem.

MS. GRAHAM: It is for me.

MS. FREEMAN: Do we have a quorum at this point, Mr. Secretary?

MR. COOPER: It's hard to tell.

MS. FREEMAN: Could the delegates please be seated?

MS. GRAHAM: Could we ask one of the elevator operators to stay longer? We would not have to walk down if we made some kind of contribution. I walked down last Saturday and I cannot walk down again.

MS. FREEMAN: I think that would be all right if we have a quorum; otherwise, it's rather useless.

MR. COOPER: We have a quorum.

MS. FREEMAN: We do have a quorum?

MR. COOPER: Yes.

MS. FREEMAN: Are people willing to take up a collection? I think we should do so; that way, we can continue. I have 10:25.

Could I have a show of hands of people who are willing to put some money into a collection and keep the elevator operator?

(Twelve hands were raised.)

MS. FREEMAN: How many are opposed?

(No response.)

MS. FREEMAN: May I have a volunteer of one delegate

who is willing to pass the hat?

MS. SIMMONS: Yes.

MS. FREEMAN: Thank you. There is no reason, delegates, why we can't work while we're passing the hat. On the floor was a Corn substitute motion, which she will have to re-move because there was a quorum call.

Delegate Corn, do you wish to re-move your motion?

MS. CORN: I'd like to know if there is anyone who is going to support me. If not, I will withdraw it.

MR. COATES: No.

MS. FREEMAN: Is there a second for hers?

MR. ROTHSCHILD: I will second it.

MS. FREEMAN: May I have order in this room? I've heard the second withdrawn and I've also heard a quorum call.

MR. COOPER: We have 24.

MS. FREEMAN: We have 24 delegates in the room. We are now back to the Love amendment. Delegate Simmons?

MS. SIMMONS: I move the previous question.

(The motion was duly seconded.)

MS. FREEMAN: All those in favor of closing off debate, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: All those opposed?

(There was one "nay.")

MS. FREEMAN: Is everybody familiar with the Love amendment?

MR. LONG: I rise to speak against the amendment.

MS. FREEMAN: You rise to speak against the amendment? We've just closed debate.

MR. LONG: But you didn't have the requisite number of speakers for and against.

MS. FREEMAN: I thought there was a substantial number of speakers in opposition earlier, delegate Long.

MR. LONG: We have debated various amendments, but we have not --

MS. FREEMAN: I don't have the exact count. I thought there were two people who spoke in opposition to delegate Love, but in the interest of fairness, delegate Long--

MR. LOVE: Madam Chair, I think Mr. Long has an amendment and I'd like to ask the body to hear it. He's the only one who I think has one final change. I ask the body to reconsider its motion to close debate and let him make his amendment, and that will be the last one.

MS. FEELEY: He didn't say he had an amendment. He said he wanted to speak against it.

MR. LOVE: I know, but he had his hand up and he

wasn't recognized.

MS. SIMMONS: Madam President, point of order. I don't think Mr. Love can negotiate who will be the last person to speak. My God, we don't know what Mr. Long is going to say, and there may be 26 people who want to speak after that.

MS. FREEMAN: Delegate Long indicated that he wanted to speak in opposition to the Love amendment, and he indicated that there had not been a sufficient number of people speaking against that, so I gave him the floor.

MR. LONG: I withdraw.

MS. FREEMAN: All right. Those in favor of the Love amendment, please --

MR. B. MOORE: Would you repeat the amendment, please?

MS. FREEMAN: Delegate Cooper, would you repeat it?

MR. COOPER: The Love amendment, as amended by the Bruning amendment, reads: "Six members shall be appointed by the governor, of which two shall have been engaged in the practice of law in the state for at least five successive years preceding appointment, and four shall not be lawyers. Those appointments shall be subject to the advice and consent of the legislature."

MS. FREEMAN: There was also, I believe, something in section (b).

MR. COOPER: Section (b): "Two members shall be appointed by the board of governors of the Unified State Bar," et cetera, et cetera. Section (d) is stricken, as well as the first paragraph in section (e).

Delegate Mason, the question has been called. We are now voting on the Love --

MR. MASON: I just wanted to ask a question about the language in the section.

MS. FREEMAN: Is this a point of order?

MR. MASON: Point of order, so we know what we're voting on. I believe there was also included in that the Schrag amendment that permitted law professors and government lawyers to be eligible.

MS. FREEMAN: We voted on that.

MR. MASON: Yes.

MS. FREEMAN: That would be incorporated throughout.

Delegate Feeley?

MS. FEELEY: Did you say (d) and (e) were deleted?

MS. FREEMAN: Yes, (d) and (e) are stricken.

MS. CORN: Except for the Schrag amendment.

MS. FREEMAN: The Schrag amendment is not in (d) or (e).

MS. CORN: It was in (e).

MR. SCHRAG: No, it wasn't, Gloria.

MR. COOPER: Even if it was, if this amendment passed, it would still be stricken.

MS. FREEMAN: Those in favor of the love amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(There were two "nays.")

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: The amendment carries.

Delegate Long?

MR. LONG: The last sentence of this section on page 8, starting at line 8, should be removed for consistency. So, I move that we strike the sentence.

(The motion was duly seconded.)

MS. FREEMAN: Could you read the sentence please, delegate Long?

MR. LONG: Yes. It says, "In the event an elected seat becomes vacant, the governor shall temporarily fill the seat by appointment until the next regularly-scheduled election is held." It is now inappropriate because we have no elections.

MS. FREEMAN: Those in favor of the amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: Those opposed?

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: Delegate Maguire?

MS. MAGUIRE: I move the previous question.

(The motion was duly seconded.)

MS. FREEMAN: The previous question has been moved and seconded. A motion was made for the previous question and that was seconded. There are still other speakers who wish to speak on this. Please take that into consideration when you vote.

MR. COOPER: Point of information. Madam Chair, as I recall when the previous question was called and delegate Long wished to speak, you recognized delegate Long in the interest of fairness. I would submit that maybe that same interest of fairness might prevail in this case.

MS. FREEMAN: Delegate Long chose not to speak.

MR. COOPER: Right, but you still recognized him in the interest of fairness.



MS. EICHHORN: Point of order.

MS. FREEMAN: Delegate Eichhorn?

MS. EICHHORN: Is it not correct that we have had two speakers for and two speakers against most of this section, and that therefore it is appropriate to call the question if a majority so votes?

MS. CORN: There are things in this other section of page 8 which have not been discussed at all. A GS-18 may not exist a hundred years from now.

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: I have one question of delegate Blount that might avoid some of these problems. Mr. Blount --

MR. COOPER: Point of order. If the other speakers who wanted to ask questions and speak can't be recognized, why should delegate Schrag?

MS. FREEMAN: I am recognizing speakers one at a time, which is all I can do.

MR. SCHRAG: Mr. Blount, I notice that line 3 refers to grade 18 of the general schedule, which is a federal term that may not exist. Is it my correct understanding that the Style and Drafting Committee may deal with this and try to come up with some rough equivalent?

MR. BLOUNT: Very definitely.

MS. FREEMAN: I'd like to point out that we have a motion on the floor, which is to close debate. Since we have a number of hands up, would the mover of that please withdraw that?

MR. JORDAN: I don't want to interrupt the call. The only question I wanted to raise was that people keep raising this issue about two for and two against. That is only to speak for or against the motion to cut off debate; that is not to debate the main motion on the floor, nor is it to offer amendments or substitutes.

MS. CORN: That's incorrect.

MS. FREEMAN: I think there is some confusion on that. There is no motion on the floor right now.

Delegate Simmons?

MS. SIMMONS: There is a question that I wish to raise, and then I would like to defer, if it's appropriate, to delegate Moore. I believe that the response by Chairman Blount to delegate Schrag with regard to the Style and Drafting Committee coming up with the language for the rate of GS-18 is substantive.

I believe it can be stated here, and I believe that delegate Moore has language for that and I would like to defer, if that's possible, the floor to him to provide the language

that he would suggest.

MR. FREEMAN: Delegate Simmons, I'll call on delegate Moore after I call on delegate Corn. We don't allow deferrals, apparently, in our rules.

MS. CORN: I'd like to defer to delegate Moore and then speak if I need to.

MS. FREEMAN: As I said, our rules don't allow deferrals. Delegate Moore, would you like to speak at this point, since you were the next hand up?

MR. T. MOORE: Madam Chairman, we do have a motion on the floor now.

MS. FREEMAN: We have the main motion, which is provision 3.14.

MR. T. MOORE: Well, I want to amend the main motion to read, particularly with reference to line 2 on page 8.

MS. FREEMAN: Speak up, please, delegate Moore; it's hard to hear.

MR. T. MOORE: On line 2, the substitute would be as follows: "Other members shall receive compensation as provided by law," and strike the remainder of the rate of grade GS-18 of the general schedule.

(The motion was duly seconded.)

MS. FREEMAN: All those in favor, please say aye.

(A chorus of "ayes.")

MR. COOPER: Debate?

MS. FREEMAN: I saw no hands. Are there people who wish to debate this? Delegate Moore?

MR. B. MOORE: Don't you ask for discussion on a motion?

MS. FREEMAN: I'm sorry. I saw no hands in the air; there were no hands.

Delegate Mason?

MR. MASON: As I understand from reading the previous section, there will be no judges on this, except retired judges. I move we insert the word "retired" in front of the word "judges." There's no provision for any active judges to be on the commission.

MS. FEELEY: Line one.

MR. MASON: Line one, the very first very word would be "retired."

MR. BLOUNT: Could we do this by consensus?

MR. MASON: Common consent would be great.

MS. FREEMAN: I did not hear what you were saying, delegate Mason.

MR. MASON: What I was saying was that the first word of the first line is the word "judges." Since there are

no active judges and only retired judges, possibly, on this commission, we ought to insert the word "retired" as the first word of the section.

MS. FREEMAN: Can we do that by consensus, since we've already adopted this article? Add the word "retired" on line one before the word "judges" -- is there any objection to that?

MR. COATES: No.

MS. FREEMAN: All right. Now, we have an amendment on the floor which calls for substituting the language in line 3 to compensation as provided by law rather than the rate of grade 18. Is there further discussion on this amendment? Delegate Corn?

MS. CORN: It just seems to me that if a judge is retired, why should he work without compensation? I would delete the whole line and begin line 2, "Members shall receive compensation as provided by law," so that everybody else who is retired gets their retirement, too.

I mean, suppose you were a retired colonel in the Army; you'd get your retirement pay as a colonel. Why should judges be in any way discriminated against?

MS. FREEMAN: You're speaking against it?

MS. CORN: Yes.

MS. FREEMAN: You want to eliminate all three lines?

MS. CORN: The only line I would keep would be,  
"Members shall receive compensation as provided by law."  
That's all that's needed in lines one, two and three.

(The motion was duly seconded.)

MS. FREEMAN: Is that a motion, delegate Corn?

MS. CORN: Yes.

MS. FREEMAN: All right, there was a second on that.  
Is there discussion of that? Delegate Cooper?

MR. COOPER: Yes. I would like to just know for my  
own clarification if, in fact, retired judges are compensated.  
If so, they are already receiving compensation and they don't  
need to double-dip and be compensated for their retirement as  
well as compensated for being on the commission.

MS. CORN: They are compensated --

MS. FREEMAN: Delegate Corn, you are out of order.

Is there other discussion? Delegate Long?

MR. LONG: I would speak in favor of the motion.  
Everybody on here is going to be a part-time person of some  
kind; some may be retired, some not.

MS. FREEMAN: Excuse me, delegate Long. There is no  
quorum.

(Pause.)

MS. FREEMAN: Delegate Eichhorn?

MS. EICHHORN: Could we get a quorum for three minutes and finish the article?

MS. FREEMAN: Maybe five, at most.

Can I get a quorum, please, so we could finish section 3.14 for tonight and then we can all go home?

Delegate Simmons?

MS. SIMMONS: I just have an observation. Chestie just ran around here telling us to give some money so that the ladies can stay and take us down and then she leaves. That's crazy.

MS. EICHHORN: I move that we table this.

MS. FREEMAN: Will the delegates please be seated?

MR. LONG: Point of order. I had the floor.

MS. FREEMAN: That's correct; delegate Long most definitely had the floor. Delegate Long?

MR. LONG: I'm speaking in favor of the Corn amendment. I see no reason to pick out judges to discriminate against. Everybody on this commission will be compensated on a daily basis. It is not seen as a full-time job. Other people may be retired, also.

MR. LOVE: Call the question.

(The motion was duly seconded.)

MS. FREEMAN: May I have order in the convention hall?

Delegate Jones?

MS. JONES: I'd like to know if that's in conflict with the Schrag amendment that speaks to, "No person who holds judicial office shall hold any other paid office, position of profit or employment." Is that in conflict with that?

MS. FREEMAN: Delegate Schrag?

MR. SCHRAG: If I understand the Corn amendment correctly, it would strike the first sentence and have the second sentence read, "Members shall receive compensation as provided by law." That seems to me totally unobjectionable. The law then provides that you can't be a judge and also hold another job for which you're receiving pay. Therefore, the Corn amendment takes care of all these problems.

MS. FREEMAN: Delegate Love?

MR. LOVE: I call the question.

(The motion was duly seconded.)

MR. COOPER: The Schrag amendment --

MS. FREEMAN: Delegate Cooper, are you making a point of order? It's very hard to hear with 20 people talking at the same time.

MR. COOPER: No.



MS. FREEMAN: The question was moved and seconded.  
All those in favor of closing off debate, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: All those opposed?

(No response.)

MS. FREEMAN: We are now voting on the Corn amendment which, delegate Cooper, could you repeat one more time for clarification?

MR. COOPER: The Corn amendment to page 8, line 2, would strike the word "other" --

MS. CORN: Strike all of lines one, two and three --

MS. FREEMAN: Delegate Corn, I asked delegate Cooper to please read it. If there's a problem, I will call on you.

MR. COOPER: Her written amendment struck the word "other."

MS. FREEMAN: Delegate Corn, would you please repeat it?

MS. CORN: Strike lines one, two and three, and insert, "Members shall receive compensation as provided by law."

MS. FREEMAN: All those in favor of the Corn amendment, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: All those opposed?

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: The Corn amendment is adopted. We are now back to the Love motion. Delegate Bruning?

MR. BRUNING: I move 3.14, as amended.

(The motion was duly seconded.)

MS. FREEMAN: All those in favor of adopting 3.14, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: All those opposed?

(There were three "nays.")

MS. FREEMAN: Abstentions?

(No response.)

MR. BLOUNT: I move for adjournment.

MS. FREEMAN: Is there a second on that?

(The motion was duly seconded.)

MS. FREEMAN: All those in favor of adjourning, please say aye.

(A chorus of "ayes.")

MS. FREEMAN: All those opposed?

(No response.)

MS. FREEMAN: Abstentions?

(No response.)

MS. FREEMAN: We are adjourned.

(Whereupon, at 10:49 p.m., the Convention was  
adjourned.)